Supreme Court, U.S.
FILED
JUL 10 2000
CLERK

(2)

No. 99-1790

IN THE

Supreme Court of the United States

ANTHONY VOLENTINE, *et al.*,

Petitioners,

v.

BECHTEL, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT BECHTEL, INC.

V. SCOTT KNEESE
Counsel of Record
KEITH D. NICHOLSON
BRACEWELL & PATTERSON
Attorneys for Respondent Bechtel, Inc.
South Tower Pennzoil Place
711 Louisiana Street
Suite 2900
Houston, Texas 77002
(713) 223-2900

160733

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

1894

STATEMENT PURSUANT TO RULE 29.6

Bechtel, Inc. is a wholly owned subsidiary of Bechtel Group, Inc.

TABLE OF CONTENTS

	Page
Statement Pursuant to Rule 29.6	i
Table of Contents	ii
Table of Cited Authorities	iii
Reasons for Denying the Writ	1
I. Neither The Decision Below Nor The Record Raises The Question Presented By The Petition	2
II. The Fifth Circuit Correctly Held Petitioners' Claims Preempted Only After A Careful Analysis Under *Garmon* And Its Progeny	3
A. Petitioners Fail to Understand the Broad Nature of the *Garmon* Preemption Doctrine	3
B. The Lower Courts' Decisions Are Not In Conflict With Either *Jones* or *Farmer*	6
Conclusion	9

TABLE OF CITED AUTHORITIES

Page

Cases:

Belknap, Inc. v. Hale, 463 U.S. 491 (1983) 3, 4, 7

Farmer v. United Bd. of Carpenters, 430 U.S. 290 (1977) 1, 6, 7, 8

Hobbs v. Hawkins, 968 F.2d 471 (5th Cir. 1992) .. 4

Local 926, Int'l Union of Op. Engs. AFL-CIO v. Jones, 460 U.S. 669 (1983) 1, 6, 7

Parker v. Connors Steel Co., 855 F.2d 1510 (11th Cir. 1988) 2

Platt v. Jack Cooper Transport, Co., Inc., 959 F.2d 91 (8th Cir. 1992) 4

Richardson v. Kruchko & Fries, 966 F.2d 153 (4th Cir. 1992) 4

San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon, 359 U.S. 236 (1959) ..... *passim*

Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters, 436 U.S. 280 (1978) ... 3, 4

REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is "whether the mere filing of charges with the National Labor Relations Board ("NLRB") requires automatic preemption of Petitioners' state-law causes of action that arise out of the same occurrence by § 8 of the National Labor Relations Act." Pet. i. Petitioners argue that the Fifth Circuit's ruling amounts to automatic preemption in any case involving a prior-filed NLRB charge. However, neither the Fifth Circuit nor the district court held, or even suggested, that the prior filing of an NLRB charge constitutes automatic preemption.

Simply put, the Fifth Circuit's ruling does not raise the question presented by the Petition and holds merely that, under *San Diego Building Trades Council, Millmen's Union, Local 2020 v. Garmon*, 359 U.S. 236 (1959) and its progeny, Petitioners' state-law claims of tortious interference, conspiracy to tortiously interfere, and intentional infliction of emotional distress are preempted under the facts of this case. Petitioners' arguments fail to recognize the broad nature of the *Garmon* preemption doctrine as established by this Court. Further, contrary to Petitioners' suggestion, the Fifth Circuit's holding is not in conflict with either *Local 926, Int'l Union of Op. Engs. AFL-CIO v. Jones*, 460 U.S. 669 (1983) or *Farmer v. United Bd. of Carpenters*, 430 U.S. 290 (1977). Accordingly, the Fifth Circuit's ruling was proper in all respects and Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

I.

NEITHER THE DECISION BELOW NOR THE RECORD RAISES THE QUESTION PRESENTED BY THE PETITION

The question presented in the Petition has no basis in either the Fifth Circuit's decision or anywhere else in the record. Petitioners argue that the Fifth Circuit's ruling effectively holds that their state-law claims of tortious interference, conspiracy to tortiously interfere, and intentional infliction of emotional distress were automatically preempted due to the prior filing of a charge with the NLRB. Petitioners further assert that the holding by the Fifth Circuit requires that "all state law causes of action that would protect workers be preempted if the worker is also the member of a collective bargaining unit." Pet. 8. Such assertions could not be further from the truth.

Contrary to Petitioners' assertions, the Fifth Circuit did not hold that the prior filing of an unfair labor practice charge with the NLRB constitutes automatic preemption. Rather, the Fifth Circuit merely stated that such a prior filing based on the same facts as a subsequent lawsuit can be "influential" in finding preemption because it "strongly suggests that the controversies are the same." Pet. 12a-13a n.7 (*citing Parker v. Connors Steel Co.*, 855 F.2d 1510, 1517 (11th Cir. 1988)). Using a prior-filed unfair labor practice charge as evidence clearly does not equate to "automatic" preemption as suggested by Petitioners. Further, the district court expressly stated that it was rejecting automatic preemption as a basis for granting the motion for summary judgment because "*Garmon* analysis so clearly preempts Plaintiffs' causes of action that this Court need not rely on a tenuous suggestion of law [automatic preemption] upon which to base its decision." Pet. 28a.

II.

THE FIFTH CIRCUIT CORRECTLY HELD PETITIONERS' CLAIMS PREEMPTED ONLY AFTER A CAREFUL ANALYSIS UNDER *GARMON* AND ITS PROGENY

Thus, neither the Fifth Circuit nor the district court found that Petitioners' claims were automatically preempted. Rather, each of the lower courts engaged in a thoughtful analysis of *Garmon* and its progeny, and arrived at the same conclusion–that Petitioners' state-law claims were preempted under *Garmon* because they were arguably within the scope of the National Labor Relations Act.

A. Petitioners Fail to Understand the Broad Nature of the *Garmon* Preemption Doctrine

In determining whether Petitioners' claims were preempted under *Garmon* and its progeny, the Fifth Circuit relied on the general principles espoused in *Garmon* and its progeny such as *Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters*, 436 U.S. 280 (1978) and *Belknap, Inc. v. Hale*, 463 U.S. 491 (1983). Specifically, the Fifth Circuit emphasized the *Sears* court's focus on whether the controversies were the same "in a fundamental respect." Pet. 10a. The Fifth Circuit also highlighted the *Belknap* court's expansion of the *Garmon* test to include analysis of not only the "central essence" of the two claims, but also the similarities in the factual bases, the interests sought to be protected, and the relief requested. Pet. 11a (*citing Belknap*, 463 U.S. at 510-11).

This Court's expansion of the "identical controversy" standard through *Sears* and *Belknap* is consistent with this

Court's desire that the scope of *Garmon* preemption remain broad. Thus, a crucial consideration in any analysis under *Garmon* is the principle that the *Garmon* preemption doctrine must be interpreted broadly. In fact, numerous other courts, including the Fifth Circuit, have recognized that the preemption doctrine espoused in *Garmon* and its progeny should be interpreted broadly in determining whether state-law claims are preempted under the NLRA. *See, e.g., Hobbs v. Hawkins*, 968 F.2d 471, 476 (5th Cir. 1992); *Platt v. Jack Cooper Transport, Co., Inc.*, 959 F.2d 91, 94 (8th Cir. 1992); *Richardson v. Kruchko & Fries*, 966 F.2d 153, 157 (4th Cir. 1992). The district court in this case explained how this Court's use of the word "arguably" in formulating the standard for preemption mandates that *Garmon* preemption be broad in nature:

> While Plaintiffs tend to read the *arguably* portion of *Garmon* analysis quite narrowly, Defendants read *arguably* quite broadly. This Court, along with a plethora of other courts, agrees with the Defendants' broad interpretation of *Garmon* preemption. If the Supreme Court had wanted to create only narrow NLRA preemption, then it would not have injected such an over-reaching term into NLRA preemption analysis. Moreover, it would not have stood by such broad interpretation for the past forty years.

Pet. 35a n.10. Consequently, Petitioners' argument for a narrow interpretation of *Garmon* is without support.

Accordingly, analyzing Petitioners' own allegations under the general principles espoused in *Garmon*, *Sears* and *Belknap*, the Fifth Circuit found that Petitioners' state-law claims for tortious interference, conspiracy to tortiously interfere, and intentional infliction of emotional distress were preempted

because they involved essentially the same claims. In arriving at this decision, the Fifth Circuit dismissed Petitioners' assertion that the case should not have been dismissed because the "Defendants' motive for interfering with Appellants' employment contracts, was disputed," holding that

> [w]hatever the motive prompting the defendants to seek the firings[1], the plaintiffs' state law and NLRB claims arise out of the same facts and at their core are essentially the same.

Pet. 16a.[2]

Therefore, the record is clear that the Fifth Circuit did not hold, either expressly or impliedly, that the prior filing of an NLRB charge constitutes automatic preemption of state-law claims. Rather, both lower courts engaged in a detailed and well-reasoned analysis of Petitioners' allegations and *Garmon* and its progeny, before arriving at the determination that Petitioners' state-law claims were preempted under federal labor law.

---

1. Although it does not matter for purposes of preemption analysis under *Garmon*, Respondents dispute Petitioners' allegation that they either "instructed" C.A. Turner to terminate Petitioners, or that they made "false statements" regarding Petitioners. Pet. 4.

2. Petitioners also argue that their claims should not be preempted because they had "no bargaining, employment or contractual relationship with either of the defendants." Pet. 4. The Fifth Circuit, however, concluded that there was a "sufficient indicia of an employment relationship" between the Petitioners and Respondents such that their interaction "arguably falls under the governance of the NLRA." Pet. 13a n.8.

B. The Lower Courts' Decisions Are Not In Conflict With Either *Jones* or *Farmer*

Petitioners assert in their Petition that this case is unlike any other case in which *Garmon* preemption was found to apply. As support for this assertion, Petitioners claim that the Fifth Circuit's decision was in direct conflict with both *Local 926, Int'l Union of Op. Engs. AFL-CIO v. Jones*, 460 U.S. 669 (1983) and *Farmer v. United Bd. of Carpenters*, 430 U.S. 290 (1977). However, in finding that *Garmon* analysis, rather than automatic preemption, was the proper approach to determine whether Petitioners' claims were preempted, the Fifth Circuit relied on both *Jones* and *Farmer*, and correctly applied these cases to the present matter.

First, the Fifth Circuit analyzed Petitioners' tortious interference and conspiracy to tortiously interfere claims under *Jones*. The Fifth Circuit observed that the instant case "bears a close resemblance to *Jones* in that both the NLRB and state law claims are fundamentally the same." Pet. 12a. The Fifth Circuit stated that

> [i]n the NLRB proceeding, the unions charged that Bechtel and Mobil had forced C.A. Turner to eliminate the breaks without consulting with the respective unions, and then to fire them for continuing to take those breaks. The plaintiffs made the same claim in state court–that the defendants forced C.A. Turner to fire them for taking en mass breaks. This issue is central to both claims and would be the focus of inquiry both before the NLRB and the court reviewing the state law claims.

Pet. 12a. Further, the court stated that both controversies arose from the same set of facts (Bechtel and Mobil's conduct during the time Petitioners were terminated) and the same interests (the "right of the employees to keep their jobs after staging what amounted to an organized walkout"). *Id.* at 12a-13a (citing *Belknap*). Thus, the Fifth Circuit engaged in a thoughtful *Garmon* analysis using *Jones* in holding that Petitioners' state-law claims for tortious interference and conspiracy to tortiously interfere were preempted. Consequently, Petitioners assertion that the Fifth Circuit's ruling is in conflict with *Jones* is without merit.

In addition, the Fifth Circuit's opinion is not in conflict with *Farmer*. In determining that Petitioners' intentional infliction of emotional distress claims were preempted, the Fifth Circuit relied on *Farmer*'s holding that, in order for a state-law claim for intentional infliction of emotional distress to be preempted,

> . . . it is essential that the state tort be either unrelated to employment discrimination or a function of the particularly abusive manner in which the discrimination is accomplished or threatened rather than a function of the actual or threatened discrimination itself.

Farmer, 430 U.S. at 305. With regard to Petitioners' intentional infliction of emotional distress claims under *Farmer*, the Fifth Circuit relied on Petitioners' own allegations contained in their Third Amended Complaint:

> The conduct referred to above [in the sections setting out the tortious-interference and conspiracy-to-interfere claims] engaged in by

> Defendants is outrageous and was intended to inflict emotional suffering and distress upon the Plaintiffs. The above alleged tortious conduct [related to interference with contract] on the part of the Defendants did in fact cause the Plaintiffs to suffer from emotional distress and mental anguish.

Pet. 15a (*citing* Petitioners' Third Amended Petition). Based on these allegations, the Fifth Circuit observed that the intentional infliction of emotional distress claimed by Petitioners "is itself the actual firing, not the manner in which that firing occurred." Pet. App. 15a. Accordingly, the Fifth Circuit correctly found that the narrow *Farmer* exception did not apply and Petitioners' intentional infliction of emotional distress claims were preempted because there was a strong potential for interference with federal law. *Id.* at 15a-16a.

CONCLUSION

The foregoing illustrates that the *Garmon* analysis undertaken by the Fifth Circuit was correct in all respects and properly held that Petitioners' state-law claims for tortious interference, conspiracy to tortiously interfere, and intentional infliction of emotional distress were preempted by federal labor law. Petitioners' assertion that the Fifth Circuit's ruling requires that "all state law causes of action that would protect workers be preempted if the worker is also the member of a collective bargaining unit," is without merit. If this were the case, the Fifth Circuit and the district court would have issued much shorter opinions and analysis under *Garmon* would not have been necessary. Accordingly, Respondent respectfully requests that this Honorable Court deny the Petition.

Dated: July 10, 2000
Houston, Texas

Respectfully submitted,

V. SCOTT KNEESE
Counsel of Record
KEITH D. NICHOLSON
BRACEWELL & PATTERSON
Attorneys for Respondent
Bechtel, Inc.
South Tower Pennzoil Place
711 Louisiana Street
Suite 2900
Houston, Texas 77002
(713) 223-2900